

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

LEON HERRERA,

Plaintiff,

vs.

No. 16-cv-01366 LF/WPL

FERNANDO “NANDO” GARCIA,  
Individually and as Mayor of the Village of Springer,  
PAUL MARES, Individually and as Chief of Police  
of the Village of Springer, and  
STEVEN MICHAEL MARTINEZ, Individually and  
as agent of the New Mexico State Police,

Defendants.

**ORDER GRANTING DEFENDANT STEVEN MICHAEL MARTINEZ’S FIRST  
MOTION TO DISMISS CLAIMS MADE AGAINST HIM IN HIS OFFICIAL  
CAPACITY**

THIS MATTER comes before the Court on Defendant Steven Michael Martinez’s First Motion to Dismiss Claims Made Against Him in His “Official” Capacity (Doc. 12). Plaintiff’s response states that he does not oppose the motion. Doc. 15 at 1. The Court finds the motion well-taken, and will GRANT it.

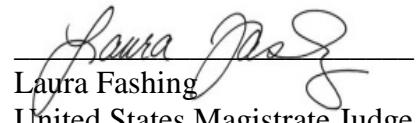
Plaintiff requests that, going forward, defendant provide him with a draft of any proposed motion so he can decide whether he concurs in or opposes the proposed motion. Doc. 15 at 1. As defendant points out, however, this is not required by the local rule. The local rule only requires a movant to “determine whether a motion is opposed.” D.N.M. L.R-Civ. 7.1(a).

[T]he local rule gives no indication how specific the movant must be in describing the motion to which it is requesting consent. On one end of the spectrum, the movant can attach a completed and ready-to-file copy of the motion; on the other end, it can describe only the relief sought, i.e., dismissal of Counts II and IV. Intermediate steps on the spectrum include giving a short rationale for the relief sought—e.g., “the motion will seek to dismiss Count II on limitations grounds and Count IV for failure to exhaust administrative remedies”—or attaching an

unfinished draft or truncated version of the motion. The local rules' only input on [this] issue[] is that the request for consent be in "good faith." D.N.M. LR-Civ. 7.1(a).

*State of New Mexico ex rel. Balderas v. Valley Meat Co., LLC*, No. 14-cv-1100 JB/KBM, Doc. 16 at 39 (D.N.M. May 20, 2015). The rule does not require defendant to provide plaintiff with an unfiled draft copy of a motion in order to comply with D.N.M. L.R.-Civ. 7.1(a). The Court will not add that requirement.

IT IS THEREFORE ORDERED that Defendant Steven Michael Martinez's First Motion to Dismiss Claims Made Against Him in His "Official" Capacity (Doc. 12) is GRANTED.



Laura Fashing  
United States Magistrate Judge  
Presiding by Consent